IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

RSA.No. 365 of 2007()

AS.128/2006 of DISTRICT COURT, KOTTAYAM
OS.247/1999 of PRL.SUB COURT,KOTTAYAM

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: APPELLANT/PLAINTIFF

RAGHAVAN,S/O.NARAYANAN, AGED 49,M
KIZHAKKEPARA HOUSE,RESIDING AT
MANJACKALPARAMBIL HOUSE,CHERUVALLYKARA,
DO. VILLAGE,KANJIRAPPALLY.

BY ADV. SRI.A.K.ALEX

RESPONDENTS: RESPONDENTS/DEFENDANTS

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1. MATHEW @ BABY,S/O.MATHAN,MANJACKAL HOUSE
CHERUVALLYKARA,DO. VILLAGE,
KOTTAYAM DISTRICT.

2. RAGHAVAN NAIR,S/O.MATHAN,
MANJACKAL HOUSE,
CHERUVALLYKARA,DO. VILLAGE,
KOTTAYAM DISTRICT.

3. THE PONKUNNAM SERVICE CO-OPERATIVE BANK
LTD.,PONKUNNAM,REPRESENTED BY ITS SECRETARY
THOMAS MATHEW.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 24/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:-

M.SASIDHARAN NAMBIAR,J.

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RSA NO. 365 OF 2007

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Dated this the 24th day of May, 2007

JUDGMENT

The plaintiff in O.S.247/1999 on the file of Sub Court, Kottayam is the appellant. Respondents are the defendants. The suit was filed for specific performance of Ext.A1 agreement for sale dated 23.1.1996. Plaint schedule property admittedly originally belonged to first respondent. Case of the appellant was that appellant and first respondent entered into Ext.A1 agreement for sale whereunder first respondent agreed to sell plaint schedule property to appellant for a total consideration of Rs.1,10,000/-. As per Ext.A1, entire consideration was paid on the date of the agreement and the sale deed is to be executed within two months. Alleging that first respondent has not executed the sale deed as promised and inspite of Ext.A2 notice he is not prepared to execute the sale deed, the suit was instituted

seeking a decree for specific performance of the agreement for sale against first respondent. Subsequently respondents 2 and 3 were impleaded on the basis of the decree obtained by second respondent against first respondent in O.S.528/1996 on the file of Munsiff Court, Kanjirappally. Third respondent was impleaded as the property was mortgaged by first respondent to the third respondent much earlier to the execution of Ext.A1 agreement. First respondent though filed a written statement did not contest the case subsequently. Second respondent filed a written statement contending that plaint schedule property was agreed to be sold by first respondent to him and an agreement for sale was executed which was got executed as per the decree in Ext.B1 suit (O.S.528/1996) and suit has been instituted in collusion with first respondent and Ext.A1 is not a genuine agreement. Third respondent filed a written statement contending that plaint schedule property was mortgaged to the Bank and Rs.70,766/- is due

from first respondent to the Bank and arbitration proceedings is pending and second respondent did not get absolute right over the property as per the sale deed got executed through court.

3. Learned Munsiff framed the necessary issues. On the evidence of Pws.1 to 4 and Dws,1 and 2 and Exts.A1 and A2 and B1 to B10, learned Sub Judge dismissed the suit holding that Ext.A1 agreement for sale is not genuine and appellant is not entitled to the decree for specific performance. Appellant challenged the decree and judgment in A.S.128/2006. Learned District Judge reappreciated the evidence in detail and confirming the finding of the learned Sub Judge that Ext.A1 agreement for sale is not genuine confirmed the decree and dismissed the appeal. It is challenged in the second appeal.

4. Learned counsel appearing for appellant was heard.

5. The argument of learned counsel appearing for appellant was that second respondent obtained

the decree in O.S.528/1996 without impleading the appellant and in collusion with first respondent and it is not valid and binding on the appellant and courts below did not consider the question whether the said decree and judgment is binding on the appellant. It was contended that as Ext.A1 agreement was executed by first respondent much prior to the agreement for sale executed by first respondent in favour of second respondent, courts below should have found that appellant has got right over the plaint schedule property and therefore a decree for specific performance should have been granted. Learned counsel vehemently argued that courts below did not properly appreciate the evidence and on the evidence they should have found that Ext.A1 agreement for sale is valid and binding on the first respondent and is a genuine agreement and therefore appellant is entitled to the decree sought for.

6. On hearing learned counsel appearing for appellant and on going through the judgments of the

courts below, I do not find any substantial question of law involved in the appeal. The suit is only for specific performance of Ext.A1 agreement for sale. Ext.A1 agreement was allegedly executed between the appellant and first respondent whereunder plaint schedule property was agreed to be sold for a consideration of Rs.1,10,000/- on 23.1.1996. Courts below on appreciating the evidence found that Ext.A1 agreement for sale is not genuine. Cogent and valid reasons were shown by the trial court and the first appellate court to hold that Ext.A1 agreement for sale is not genuine. This factual finding cannot be interfered by reappreciation of evidence as sought for by learned counsel appearing for appellant when the appreciation of evidence was proper. Eventhough it was vehemently argued that the claim for protection provided under section 53A of Transfer of Property Act was not considered by the courts below, it is clear from the evidence on record that appellant was never put in possession of the

property pursuant to Ext.A1 agreement for sale. Therefore appellant cannot contend that he is not entitled to the protection provided under section 53A of Transfer of Property Act. I find no substantial question of law involved and appeal is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

RSA.NO.365 /07

JUDGMENT

24TH MAY, 2007